

**MINUTES**  
**REGULAR MEETING OF THE BOARD OF LAND COMMISSIONERS**  
**Monday, August 16, 2004, at 9:00 a.m.**  
**State Capitol Building, Room 303**

**PRESENT:** Governor Judy Martz, Superintendent of Public Instruction Linda McCulloch, Secretary of State Bob Brown, State Auditor John Morrison and Attorney General Mike McGrath

For clarification on page 3, Mr. Clinch suggested the minutes on Rights-of-Way No. 12537, from the July 26, 2004, meeting be amended to read:

Paragraph 3:

"...option to purchase an easement at five years." And "...be paid in the event the option to purchase an easement is exercised."

Paragraph 5:

"...bond is passed, the easement would be paid for."

Paragraph 6:

"...and the total purchase price is \$600,000 for the easement."

Motion was made by Ms. McCulloch to approve the amended minutes of the Board of Land Commissioners' meeting held July 26, 2004. Seconded by Mr. Brown. Motion carried unanimously.

**BUSINESS TO BE CONSIDERED**

**804-1      AMENDMENT TO PRIVATE DRIVEWAY POLICY**

Mr. Clinch said approximately five years ago the previous Board, at the department's suggestion, adopted a private driveway policy that guides how the department issues easements on private driveways that cross state land. At that time we thought the appropriate thing would be to have a term limit of 30 years on those easements recognizing that that would give the department the option to review them in 30 years. Since 30 years was the duration of most home mortgages, it would coincide well with current practices. Since then, we've issued dozens of those easements over the objection of the applicants. We found that in reality, that policy doesn't fit well in today's world and that we're probably the only landowner that is issuing term easements for private driveways. The department would like to amend the private driveway policy to give it the authority to issue easements in perpetuity for private driveways, when appropriate. It also maintains the Board's discretion in that if certain type easements come before it where the department thinks it is appropriate to put a term limit on it, that right is still reserved. We're just amending the policy to say we're not going to do that routinely on all driveway easements. This brings us into consistency with what is happening in the marketplace. Mr. Clinch asked for approval to amend the private driveway to remove the requirement of a 30-year limit on private driveways, while maintaining the Board's discretion to continue to limit anything it wishes to.

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Mr. Clinch said there is one clerical correction to the document in the Board's packet, on the second page change "evaluation" to "evaluating."

Motion was made by Mr. Morrison to approve the amendment to the private driveway policy. Seconded by Ms. McCulloch. Motion carried unanimously.

Mr. Clinch suggested the Board address the following three proposed timber sales collectively. He said these three sales, while located in different areas, are consistent with the process the department uses to prepare sales, soliciting public comment, incorporating public comment, and in developing mitigations. None of these sales will occur in an old growth forest.

804-2            EAST TROUT BEETLE SALVAGE

This proposed sale is located 10 miles SW of Philipsburg, Montana, and proposes to harvest 153 acres consisting of two harvest units. The projected volume is 9,979 tons or 1,542 MBF of sawlogs. The purpose is to minimize value loss of trees killed by Douglas-fir bark beetles, remove trees currently infested, and reduce the risk of further mortality by reducing competition and increasing vigor of the trees in the adjacent stands. Access is across existing roads. Approximately .54 mile of road construction, 1.4 miles of temporary road construction, and 5.8 miles of reconstruction/maintenance are required. Upon completion of the sale, the newly constructed roads will be revegetated. There were no historical or cultural sites identified and no significant environmental impacts will result. The proposed sale will generate approximately \$186,569.70 in revenue, with an additional Forest Improvement Fee of \$7.37/ton.

804-3            EVANS LAKE TIMBER SALE

This proposed sale is located three miles east of Ovando, Montana, and proposes to harvest 81 acres in eight harvest units. The projected volume is 3,372 tons. The purpose is to reduce stocking; enhance tree vigor and growth; reduce the threat of catastrophic wildfire; and shift residual stands towards seral (historic) tree species composition. Harvest methods used will be commercial thinning and shelterwood. Access is across existing roads. Approximately .09 mile of reconstruction is required. Upon completion of the sale 1.26 miles of open road will be closed. There are no historical or cultural sites identified and no significant environmental impacts will result. The proposed sale will generate approximately \$88,864 in revenue, and an additional Forest Improvement Fee of \$7.17/ton will be charged.

804-4            SMITH RIVER II TIMBER SALE

This proposed timber sale is located 20 miles southeast of Cascade, Montana, and involves the harvest of timber from 40 acres in one harvest unit. The projected volume is 2,640 tons. The purpose is to improve the overall health and vigor of the Douglas-fir as well as enhancing age-class diversity. The irregular shelterwood harvest would reduce the currently heavily stocked Douglas-fir stand to levels that would have historically occurred from fire. Access is across existing roads and temporary road use agreements have been obtained. Approximately 1.90 miles of road construction, 3.26 miles of spot road reconstruction, and .66 miles of road reclamation and abandonment are required. There are no historical or cultural sites, no

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significant environmental impacts will result. The projected revenue is \$26,578 with an additional fee of \$2.17/ton for Forest Improvement Fee charged.

Mr. Clinch requested approval of the three proposed timber sales.

Motion was made by Mr. Brown to approve the East Trout Beetle salvage, Evans Lake sale, and the Smith River II sale. Seconded by Mr. McGrath. Motion carried unanimously.

804-5            RIGHTS-OF-WAY APPLICATIONS

This month there are 60 applications for rights-of-way. They are #12603 through 12655, 12657 through 12663 from Fallon County for public county roads; and #12664 from Dick Andersen for a non-exclusive easement for use of a road or road segment. Mr. Clinch requested approval.

Motion was made by Mr. McGrath to approve the rights-of-way applications. Seconded by Mr. Morrison. Motion carried unanimously.

804-6            WEAVER SLOUGH CONSERVATION EASEMENT

Glen Erickson, DFWP, thanked the Board and department for allowing this item on the agenda at the last minute. He said this is a Conservation Easement we are co-purchasing with the Flathead Valley Trust. It is 449 acres on Weaver Slough, a property just north of Flathead Lake. The price of the property is \$898,000, which is a bargain, as it was appraised at \$1.35 million. We are using funding from the NRCS Farm and Ranch Protection Program, the BPA Fisheries Mitigation funds, North American Wetland Conservation Act funding source, and some of our Montana Migratory Bird Stamp funds. There are two other adjoining Conservation Easements totaling 367 acres that were completed on Weaver Slough in the past, also there are some adjacent landowners that have put easements on property around there. The entire Slough has an easement around it. The proposal and the terms of the easement deal with protecting the property from commercial development, any dumping on the property, i.e., commercial feed lots or anything that would damage the native vegetation, and any subdivision other than the two homesites the property owners have reserved. With this particular purchase, the landowner retains the rights as far as public access. What we are protecting with this easement is actually the native vegetation and the land. Actual access to hunt or visit the land is controlled by the landowner. There will be no outfitting provided for on the property, but the landowner would be able to lease the property to a club or conservation group or organization for hunting, and he could raise birds on the property himself as far as a game farm. We think it is a very important property to preserve riparian wetlands in the area. It also maintains the farming and agricultural production on that property which is important to wildlife as food sources. Mr. Erickson asked approval.

Motion was made by Mr. McGrath to approve the Weaver Slough Conservation Easement request. Seconded by Ms. McCulloch. Motion carried unanimously.

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PUBLIC COMMENT

Mr. McGrath said at the last meeting we talked about the grazing preference rights decision and had a discussion among the Board members as to whether it should appeal. I think the minutes indicate the department was going to come back with a recommendation. Apparently we are not doing that today.

Mr. Clinch said we have 60 days from the time the Notice of Entry of Judgment is filed. That gives us plenty of time to make that decision. We had some discussion with your staff and at this time we're thinking the appeal is not the way to go. We've had discussions internally about a short term remedy that would involve the development of administrative rules. The Board would adopt, through rules, a policy that responds to Judge Sherlock's decision. We had discussions with the Board's staff and told them that in the coming weeks we'd get that going and visit with them individually and then come back with a proposed rule at the next Land Board meeting. Part of that conversation might involve whether the department thinks it would be appropriate for any change in statute during the next legislative session. We have both a short term and long term problem as a result of the Sherlock decision. Our next renewal cycle begins January 1<sup>st</sup> and there is no time to do a legislative fix. For those that have read the Sherlock decision thoroughly, what really is the salient issue is trying to give legislative direction to the constitutionally-mandated authority of this Land Board. We believe that the best solution is to adopt a set of rules that clearly sets out the decision process of this Board as to how it would like the department to renew grazing leases. The short answer is we're working on it, we have visited with the Board's staff, we will be providing documents to you soon, and we would be prepared to come back with proposed rules at the next regularly scheduled meeting.

Mr. Morrison said if the department does rulemaking it needs to have the rules independent of the statute that has been stricken. The rules can't be explaining the statute to add Land Board discretion to the review of the exercise of the preference right, they have to stand alone because the statute is now gone pending reversal or unless and until the decision of Judge Sherlock is reversed by the Supreme Court. I think a statutory change needs to be accomplished in the next session, but in the meantime in order to deal with the January renewals, it seems to me you've got to tie your rule to something other than the statute that's been stricken.

Mr. Clinch said absolutely. We would tie them to the general authorities of this Board to adopt a process for lease renewals independent of any statutes.

Mr. Brown moved to adjourn.